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*Attorneys for Plaintiff Research in Motion Limited*

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

RESEARCH IN MOTION LIMITED,

*Plaintiff,*

-against-

MOFTWARE LLC, AMZER, PINAKIN  
DINESH, JOHN DOES 1-50; and XYZ  
BUSINESSES,

*Defendant.*

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CIVIL ACTION NO. \_\_\_\_\_



DECLARATION OF MARK  
GUIBERT

I, MARK GUIBERT, declare as follows, under penalty of perjury, pursuant to 28 U.S.C.  
§ 1746:

1. I have been employed with Research In Motion Limited (hereinafter, "RIM"), since 1997 and I am currently Vice President, Corporate Marketing. My office is located at 295 Phillip Street, Waterloo, Ontario, Canada N2L 3W8. I make this declaration on personal knowledge.

2. RIM adopted in 1999 the name BLACKBERRY to identify wireless telecommunications devices and products and services related thereto. RIM began using BLACKBERRY in the United States in 1999 and has used it in the United States ever since.

3. RIM owns numerous trademarks identifying its BLACKBERRY handheld product line and products and services related thereto, including without limitation, the following U.S. federal registrations:

<i>U.S. REGISTRATION NO.</i>	<i>RIM TRADEMARK</i>
1982049, 2822521	RIM
2036380, 2833837	RESEARCH IN MOTION
2402763, 2678454	<b>BLACKBERRY</b>
2672464, 2700671, 2844340	BLACKBERRY
3102687	
3105797, 3240231	

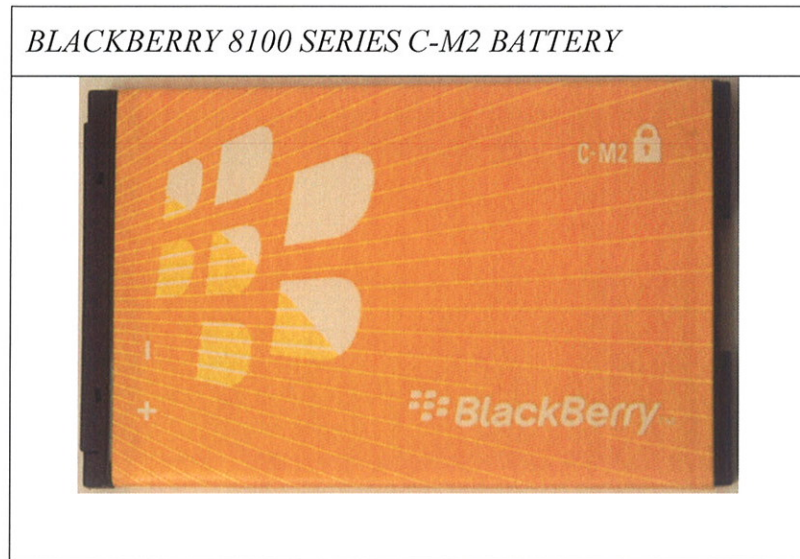
(collectively referred to herein as the “BLACKBERRY Trademarks.”)

4. All of RIM’s BLACKBERRY wireless handheld products are made for use with proprietary BLACKBERRY batteries.

5. All of RIM’s BLACKBERRY batteries use one or more of the BLACKBERRY Trademarks.

6. Many of RIM’s BLACKBERRY batteries display distinctive trade dress including those depicted and described below:

BLACKBERRY 8100 Series C-M2 Trade Dress



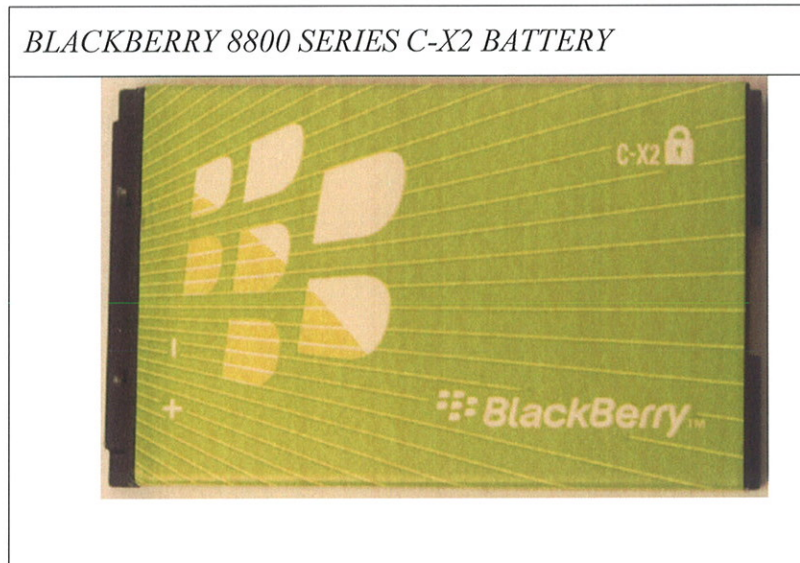
The trade dress for this battery consists of, among other elements, a rectangular battery featuring a label having:

- a rayed background comprised of thick and thin lines, where: the thick lines are of a uniform dark shade of yellow (PANTONE® 130 C) and the thin lines are of a uniform light shade of yellow (PANTONE 115 C); and the lines appear to originate at a common nucleus off the left side of the battery and diverge across the battery from left to right in an expanding sunburst-style pattern;
- a registered RIM trademark logo on the top-left comprised of a pattern of five semi-circular rectangular shapes (Registration Nos. 3105797 and 3240231) (hereinafter referred to as the “RIM Logo”) where: two of the bottom shapes are shaded in the light shade of yellow (PANTONE 115 C) with thin white lines superimposed; and three of the middle shapes are partially shaded in the light shade of yellow

(PANTONE 115 C) with the thin white lines superimposed, and the top two shapes are white;

- the registered RIM trademark on the bottom right-hand side comprising the RIM Logo followed by “BlackBerry” (Registration No. 3102687); and
- the term “C-M2” on the top right hand-side followed by a white silhouette icon of a lock.

BLACKBERRY 8800 Series C-X2 Trade Dress



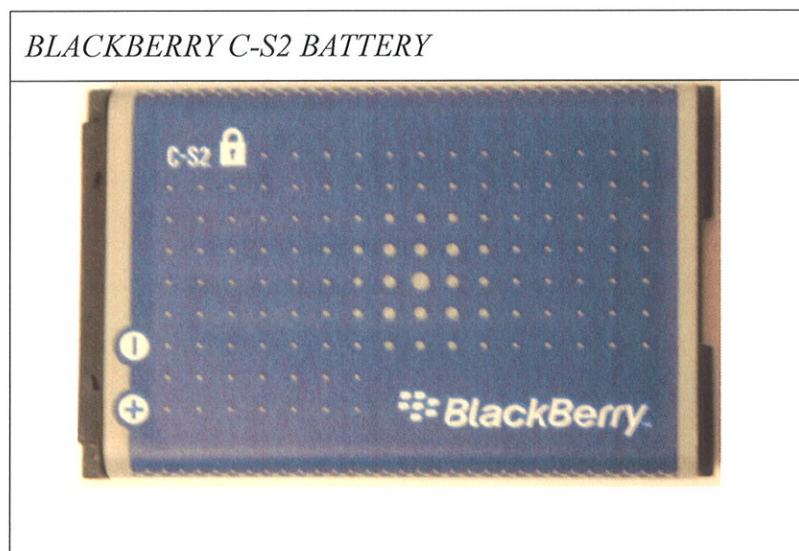
The trade dress for this battery consists of, among other elements, a rectangular battery featuring a label having:

- a rayed background comprised of thick and thin lines, where: the thick lines are of a uniform dark shade of green (PANTONE 584 C) and the thin lines are of a uniform light shade of green (PANTONE 584 C); and the lines appear to originate at a

common nucleus off the left side of the battery and diverge across the battery from left to right in an expanding sunburst-style pattern;

- the registered RIM Logo on the top-left (Registration Nos. 3105797 and 3240231) where: two of the bottom shapes are shaded in the light shade of green (PANTONE 584 C) with thin white lines superimposed; and three of the middle shapes are partially shaded in the light shade of green (PANTONE 584 C) with thin white lines superimposed, and the top two shapes are white;
- the registered RIM trademark on the bottom right-hand side comprising the RIM Logo followed by “BlackBerry” (Registration No. 3102687); and
- the term “C-X2” on the top right hand-side followed by a white silhouette icon of a lock.

BLACKBERRY C-S2 Battery Trade Dress



The trade dress for the BLACKBERRY C-S2 battery consists of, among other elements, a rectangular battery featuring a label having:



- a blue (PANTONE 647 C) background covered with an array of grey (PANTONE 877 C METALLIC) dots of an even size except at an area towards the center-right of the battery where the dots increase in size towards a central dot to create the visual effect of a magnified section of the label;
- the code “C-S2” on the top left hand side in white followed by a white silhouette icon of a lock;
- a registered white RIM trademark on the bottom right hand-side comprising a RIM Logo followed by “BlackBerry” (Registration No. 3102687);
- a thick gray (PANTONE 877 C METALLIC) line bordering the left and right sides of the battery; and
- a blue (PANTONE 647 C) half-moon border pattern on the top and bottom sides of the battery framed by four rows of increasingly smaller blue (PANTONE 647 C) dots against a gray (PANTONE 877 C METALLIC) background.

7. The total overall impression of each of the above-described batteries constitutes the BLACKBERRY trade dress (“BLACKBERRY Trade Dress”) and distinguishes the RIM BLACKBERRY batteries from the products of other sellers. The RIM BLACKBERRY Trade Dress is well known, associated with RIM, and inherently distinctive.

8. RIM’s BLACKBERRY products are used by millions of wireless subscribers in the United States. In fact, RIM’s BLACKBERRY has become one of the most recognized and respected brands in the industry. The brand’s growing recognition and respect was recognized by the *Index of Canada’s Most Valuable Brands Of 2007* and in Landor Associates and Stern Stewart’s *BrandEconomics Top Ten Breakaway Brands For 2007*.

9. RIM's BLACKBERRY wireless handheld product line has, thus, become one of the most well-known and successful of all wireless handheld product lines in both the United States and elsewhere.

10. People throughout the world recognize products bearing BLACKBERRY Trademarks and/or Trade Dress as high quality products made and distributed by RIM. The BLACKBERRY Trademarks and Trade Dress are well-known and respected by consumers worldwide.

11. Since 2004, RIM has spent more than \$180 million to advertise and promote the BLACKBERRY Trademarks in the United States alone, achieving a total of sales for all products bearing the BLACKBERRY Trademarks in excess of \$1.8 Billion in FY 2007 in the United States.

12. Since FY 2005, in the United States alone, RIM has sold in excess of 16 million BLACKBERRY wireless handheld devices having genuine RIM batteries bearing the BLACKBERRY Trade Dress. Typically, the consumer must install the battery. RIM also sells replacement batteries bearing the BLACKBERRY Trade Dress through accessory sales channels including US carrier partners such as T-Mobile, Verizon, AT&T, Sprint and others as well as directly from RIM at [www.shopblackberry.com](http://www.shopblackberry.com).

13. The BLACKBERRY Trademarks and Trade Dress represent RIM's commitment to providing high quality wireless handheld devices and accessories related thereto.

14. RIM has developed enormous amounts of goodwill and the BLACKBERRY Trademarks and Trade Dress are of inestimable value to RIM.

15. RIM has engaged and continues to engage in interstate activities designed to promote BLACKBERRY Trademarks and Trade Dress and the business and goodwill associated with each of its marks, trade dress, logos and property in the State of New York and throughout the United States.

16. RIM sells products bearing the BLACKBERRY Trademarks and Trade Dress through a network of distributors in the United States and worldwide.

17. The standard retail prices in USD for the BLACKBERRY batteries as shown on RIM's retail accessories website [www.shopblackberry.com](http://www.shopblackberry.com) as of March 26, 2008 are as follows:

C-M2 Extra Battery (BlackBerry Pearl)	\$49.99
C-X2 Extra Battery (BlackBerry 8800 Series)	\$54.99
C-S2 Battery (BlackBerry 7100, Curve, 8700 Series)	\$49.99
Rechargeable Battery (BlackBerry 6200, 6500, 7200, 7500, 7700 Series)	\$27.99

18. Defendants are not affiliated with or sponsored by RIM and have not been authorized by RIM to sell the allegedly infringing and allegedly counterfeit batteries.

19. If defendants are not stopped from, among other things, selling allegedly infringing and allegedly counterfeit products bearing copies of the BLACKBERRY Trademarks and Trade Dress, RIM will suffer serious damage. When consumers spend their money believing that they are purchasing authentic high-quality RIM products, but instead unintentionally buy allegedly infringing and allegedly counterfeit products, RIM loses not only sales, but also control over its established reputation. This is particularly important here where I



understand some of the allegedly infringing and allegedly counterfeit batteries lack the appropriate safety features and thus may create a safety risk.

20. RIM is extremely concerned about the irreparable harm that is being caused, and will continue to be caused, by defendants' sale of the allegedly infringing and allegedly counterfeit BLACKBERRY batteries.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 28, 2008

  
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Mark Guibert